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**BUENA VISTA COMPANY V. MCCANDLISH & CLOWES.**—Decided at Richmond, November 21, 1895.—*Harrison, J* :

1. **RESCISSION**—*Assumpsit—money had and received—special count.* If money be paid on a contract of sale which is wholly rescinded, either by mutual consent or by virtue of a clause therein, or the consideration of which wholly fails, the party making such payment, if he has been guilty of no fraud or illegal conduct in the transaction, may recover back the money under the common counts in assumpsit for money had and received, or on a special count setting out the facts from which the cause of action arises.

2. **EVIDENCE**—*Assumpsit for money paid on sealed contract which has been rescinded.* In an action of assumpsit to recover money paid on a contract which has been rescinded, it is competent for the plaintiff to introduce in evidence the contract, though under seal and not signed by him, which has been rescinded, and which shows the amount paid by the plaintiff, and the consideration therefor. The contract is not in support of the form of the action, but is a part of the evidence necessary to prove the plaintiff's case.

3. **CONTRACTS**—*House building—plans and specifications—substantial compliance.* If one contracts to purchase a house which is to be built according to designated plans and specifications, he will not be compelled to accept it, when completed, unless there has been a substantial compliance with such plans and specifications. The changes, however, need not affect the value or utility of the building as a whole, or of the part changed. Changes or deviations which involve merely matters of taste, or which affect the appearance of the building, or in any way make it less desirable to the purchaser, entitles him to decline to accept it. Nor can the failure to comply with the specifications in one part be compensated or atoned for by doing more than was required in another part. The purchaser cannot be compelled to take that for which he has not contracted, nor can he refuse to take that which is substantially what he fairly contracted for.

4. **PRACTICE AT COMMON LAW**—*When verdict should not be set aside.* In an action to recover back money paid on a contract which the plaintiff has treated as rescinded, the Court will not set aside a verdict in favor of the plaintiff, where the evidence shows that the conduct of the defendant has been such as to amount to a rescission on his part, or to justify one on the part of the plaintiff.

5. **APPELLATE COURT**—*How excessive verdict corrected.* If it appears to the appellate court that the verdict of the jury and the judgment of the trial court are plainly right, except only that the amount is excessive, and the record shows plainly the amount of such excess, the judgment will be reversed and set aside and the cause remanded to the trial court, with instructions to put the successful party on terms to release the excess, or to award a new trial, and if such excess is released, to enter judgment for the corrected amount.

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**NATIONAL BANK OF VIRGINIA V. CRINGAN AND OTHERS.**—Decided at Richmond, April 18, 1895.—*Harrison, J* :

1. **PARTNERSHIP**—*Powers of partners before and after formation.* Prior to the actual existence of a partnership, though one be in contemplation, there is no implied power in one partner to bind the firm. That agency only arises when the